

whether or not it will send its full quota of delegates to the union convention. The delegates present from a local may cast the entire vote allotted to that local if this is permitted by the constitution and bylaws.

§ 452.129 Non-discrimination.

Further, distinctions in representational strength among or within locals may not be based on arbitrary and unreasonable factors such as race, sex, or class of membership based on type of employment.

§ 452.130 Expenses of delegates.

A local may elect two groups—one which would receive expenses while the other would be required to pay its own way, provided each member has an equal opportunity to run for the expense-paid as well as the non-expense-paid positions.

§ 452.131 Casting of ballots; delegate elections.

The manner in which the votes of the representatives are cast in the convention is not subject to special limitations. For example, the voting may be by secret ballot, by show of hands, by oral roll call vote, or if only one candidate is nominated for an office, by acclamation or by a motion authorizing the convention chairman to cast a unanimous vote of the delegates present.

§ 452.132 Proxy voting.

There is no prohibition on delegates in a convention voting by proxy, if the constitution and bylaws permit.

§ 452.133 Election of delegates not members of the labor organization.

A labor organization's constitution and bylaws may authorize the election of delegates who are not members of the subordinate labor organization they represent, provided the members of the subordinate organization are also eligible to be candidates.

§ 452.134 Preservation of records.

The credentials of delegates, and all minutes and other records pertaining to the election of officers at conventions, must be preserved for one year by the officials designated in the con-

stitution and bylaws or by the secretary if no other officer is designated. This requirement applies not only to conventions of national or international labor organizations, but also to representative bodies of intermediate labor organizations.

Subpart J—Special Enforcement Provisions

§ 452.135 Complaints of members.

(a) Any member of a labor organization may file a complaint with the Office of Labor-Management Standards alleging that there have been violations of requirements of the Act concerning the election of officers, delegates, and representatives (including violations of election provisions of the organization's constitution and bylaws that are not inconsistent with the Act).⁵⁷ The complaint may not be filed until one of the two following conditions has been met: (1) The member must have exhausted the remedies available to him under the constitution and bylaws of the organization and its parent body, or (2) he must have invoked such remedies without obtaining a final decision within three calendar months after invoking them.

(b) If the member obtains an unfavorable final decision within three calendar months after invoking his available remedies, he must file his complaint within one calendar month after obtaining the decision. If he has not obtained a final decision within three calendar months, he has the option of filing his complaint or of waiting until he has exhausted the available remedies within the organization. In the latter case, if the final decision is ultimately unfavorable, he will have one month in which to file his complaint.

§ 452.136 Investigation of complaint by Office of Labor-Management Standards, court action by the Secretary.

(a) The Office of Labor-Management Standards is required to investigate each complaint of a violation filed in accordance with the requirements of the Act and, if the Secretary finds probable cause to believe that a violation has occurred and has not been

⁵⁷ Act, sec. 402(a).

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remedied, he is directed to bring within 60 days after the complaint has been filed a civil action against the labor organization in a Federal district court. In any such action brought by the Secretary the statute provides that if, upon a preponderance of the evidence after a trial upon the merits, the court finds (1) that an election has not been held within the time prescribed by the election provisions of the Act or (2) that a violation of these provisions "may have affected the outcome of an election", the court shall declare the election, if any, to be void and direct the conduct of an election under the supervision of the Secretary, and, so far as is lawful and practicable, in conformity with the constitution and bylaws of the labor organization.

(b) Violations of the election provisions of the Act which occurred in the conduct of elections held within the prescribed time are not grounds for setting aside an election unless they "may have affected the outcome." The Secretary, therefore, will not institute court proceedings upon the basis of a complaint alleging such violations unless he finds probable cause to believe that they "may have affected the outcome of an election."

(b-1) The Supreme Court, in *Hodgson v. Local Union 6799, Steelworkers Union of America*, 403 U.S. 333, 91 S.Ct. 1841 (1971), ruled that the Secretary of Labor may not include in his complaint a violation which was known to the protesting member but was not raised in the member's protest to the union.

Complaints filed by the Department of Labor will accordingly be limited by that decision to the matters which may fairly be deemed to be within the scope of the member's internal protest and those which investigation discloses he could not have been aware of.

(c) Elections challenged by a member are presumed valid pending a final decision. The statute provides that until such time, the affairs of the labor organization shall be conducted by the elected officers or in such other manner as the union constitution and bylaws provide. However, after suit is filed by the Secretary the court has power to take appropriate action to

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preserve the labor organization's assets.

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Subpart K—Dates and Scope of Application

§ 452.137 Effective dates.

(a) Section 404 states when the election provisions of the Act become applicable.⁵⁸ In the case of labor organizations whose constitution and bylaws can be lawfully modified or amended by action of the organization's "constitutional officers or governing body," the election provisions become applicable 90 days after the enactment of the statute (December 14, 1959). Where the modification of the constitution and bylaws of a local labor organization requires action by the membership at a general meeting or by referendum, the general membership would be a "governing body" within the meaning of this provision. In the cases where any necessary modification of the constitution and bylaws can be made only by a constitutional convention of the labor organization, the election provisions become applicable not later than the next constitutional convention after the enactment of the statute, or one year after the enactment of the statute, whichever is sooner.

(b) The statute does not require the calling of a special constitutional convention to make such modifications. However, if no convention is held within the one-year period, the executive board or similar governing body that has the power to act for the labor organization between conventions is empowered by the statute to make such interim constitutional changes as are necessary to carry out the provisions of title IV of the Act. Any election held thereafter would have to comply with the requirements of the Act.

§ 452.138 Application of other laws.

(a) Section 403⁵⁹ provides that no labor organization shall be required by law to conduct elections of officers with greater frequency or in a different

⁵⁸ Act, sec. 404.

⁵⁹ Act, sec. 403.